

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-CR-00324-RJC-DSC

USA)
)
v.) ORDER
)
KENDRICK BRINKLEY)
)

THIS MATTER is before the Court upon remand from the United States Court of Appeals for the Fourth Circuit for additional proceedings, (Doc. No. 52: Opinion and Judgment; Doc. No. 53: Mandate); the government's Motion to Dismiss Counts Two and Three, (Doc. No. 58); and the parties' Joint Motion for Time Served Sentence, (Doc. No. 57).

On appeal, the Fourth Circuit reversed this Court's denial of the defendant's Motion to Suppress, vacated his convictions on Counts Two and Three and his sentence on Count One, and remanded the case for further proceedings. (Doc. No. 52: Opinion at 25). Accordingly, the government moves to dismiss Counts Two and Three which relied on the evidence suppressed by the appellate court. (Doc. No. 58).

As to Count One, a violation of 18 U.S.C. § 922(g)(1), the revised advisory guideline range is 30 to 37 months' imprisonment. (Doc. No. 55: Supplemental Pressentence Report at 2). Because the defendant has served approximately 48 months in custody, the parties jointly move to waive a sentencing hearing and impose a time-served sentence. (Doc. No. 59 at 2). The Court has considered the

factors set forth in 18 U.S.C. § 3553(a), and finds that the proposed sentence is sufficient, but not greater than necessary, accomplish the goals of sentencing.

IT IS, THEREFORE, ORDERED that:

1. the government's Motion to Dismiss Counts Two and Three, (Doc. No. 58) is **GRANTED**;
2. the parties' Joint Motion for Time Served Sentence, (Doc. No. 57), is **GRANTED**, and the defendant's sentence for Count One is reduced to the time served, plus up to 10 days for the BOP to process his release, and up to 14 additional days to protect the public's safety if necessary to quarantine the defendant based on the COVID-19 pandemic. The defendant's special assessment is reduced to \$100. All other terms and conditions remain unchanged; and
3. if the defendant is released from imprisonment without a residential plan accepted by the United States Probation Office (USPO), he shall submit to the local Residential Reentry Center for a period not to exceed 90 days, with work release, at the direction of the USPO, as a condition of supervised release.

The Clerk is directed to certify copies of this Order the defendant, defendant's counsel, the United States Attorney, the United States Marshals Service, the United States Probation Office, and the Clerk of the United States Court of Appeals for the Fourth Circuit.

Signed: March 4, 2021



Robert J. Conrad, Jr.
United States District Judge
